

**EXHIBIT 1**



**In the Matter Of:**

**Creedon Controls, Inc.**

**v.**

**Banc One Building Corporation**

**C.A. # 05-CV-300-JJF**

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**Transcript of:**

**Philip Altheim**

**June 28, 2006**

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Creedon Controls, Inc.  
Philip Altheimv.  
C.A. # 05-CV-300-JJFBanc One Building Corporation  
June 28, 2006

1 tried to come to resolutions with Creedon and, you  
2 know, I had heard that this is an issue. She's an  
3 issue.

4 Q. You mean after they sued you?  
5 A. I guess so.  
6 Q. Is after the suits were filed the first time  
7 that you personally saw the proposed changes that --  
8 A. No, I didn't.  
9 Q. Okay, was it before suit was filed that you saw  
10 the proposed changes with Creedon?  
11 A. No.

12 MR. BRADLEY: Let him finish the whole  
13 question, then answer, okay?

14 THE WITNESS: Okay.  
15 Q. Okay. If it wasn't before or after suit was  
16 filed, is the answer that you've never seen them?  
17 A. I've never seen it.  
18 Q. Okay. But you're aware that there were some  
19 proposed changes that were suggested?  
20 A. Yes, sir.  
21 Q. And did you become aware of those proposed  
22 changes after suit was filed?  
23 A. Yes.  
24 Q. Not before?

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1 Q. And how did you so learn? How did you learn  
2 that?  
3 A. Talked to counsel.  
4 Q. Did you talk to anyone else other than your  
5 counsel?  
6 A. No.  
7 Q. Have you talked to anyone at Tishman about  
8 that?  
9 A. No.  
10 Q. Have you talked to anyone at Banc One about  
11 their denial that you were acting as agent?  
12 A. There was nobody to talk to at Banc One.  
13 Q. Their successor?  
14 A. No.  
15 Q. Are you aware that there is a back charge of  
16 approximately \$15,000 made against Creedon with  
17 respect to the Brandywine data center project?  
18 A. No, sir.  
19 Q. So you don't know, you don't know or are not  
20 aware of any of the specifics about that?  
21 A. No, sir.  
22 Q. My telling you today, is that the first that  
23 you've ever heard that there's a back charge asserted?  
24 A. Yes, sir.

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1 A. No.  
2 Q. And how did you become aware of that?  
3 A. The discussion took place at our office that  
4 after having done the successful project, one person  
5 has caused a lawsuit. And I inquired what's this all  
6 about? And Angerame and Rosenberg and people, Donna  
7 told me this is, this is what's happening.  
8 Q. And was there a discussion then as to the  
9 nature of Forest's role as agent for Banc One or as a  
10 not-at-risk party? Was that discussed at that  
11 particular time?  
12 A. No.  
13 Q. When did you first learn that Banc One denied  
14 that Forest was acting as agent for Banc One with  
15 respect to the data center project?  
16 A. I'm not understanding that question.  
17 Q. All right. I'll try it again. What I want to  
18 know is when you personally first learned that Banc  
19 One was denying that your company acted as its agent,  
20 vis-a-vis Creedon Controls, Inc., for the Brandywine  
21 data center project?  
22 A. I would say just recently.  
23 Q. How recently?  
24 A. The last few months.

1 MR. BESTE: I think those are my  
2 questions. Thank you, sir.  
3 THE WITNESS: Good.  
4 MR. BRADLEY: He's next. Let's take a  
5 five-minute break. Do you have any questions, Paul?  
6 MR. McDONALD: Um-hum.  
7 (A brief recess was taken.)  
8 (Altheim Exhibits No. 1 through 7 were  
9 marked for identification.)  
10 BY MR. McDONALD:  
11 Q. Good morning, Mr. Altheim. As we met earlier  
12 this morning, my name is Paul McDonald for Banc One  
13 Building Corporation, with the law firm of Paul  
14 Hastings Janofsky & Walker. I have some questions for  
15 you regarding some of the testimony this morning.  
16 The first thing I want to do is talk about  
17 your understanding that Forest Electric was an agent  
18 of the bank. Is it correct to say that you base that  
19 understanding on your communications with  
20 Mr. Weinberg, Mr. Auwarter and Mr. Fahrenbach about  
21 the no-risk --  
22 A. Yes.  
23 Q. Okay. And is that the only thing you base your  
24 belief that Forest Electric is, was an agent of the

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1 Banc One Building Corporation on?  
 2 MR. BRADLEY: Object to form.  
 3 **A. Yes.**  
 4 Q. And regarding these communications you had  
 5 with -- now, first of all, did you have that  
 6 communication with all three or just one of those  
 7 individuals, if you recall, about the no-risk aspect  
 8 of the contract?  
 9 **A. I know I had the conversation with Mike, and I**  
 10 **believe that certainly Karl and, and I forget his --**  
 11 **Gary Fahrenbach, were part of discussions. It wasn't**  
 12 **the most important thing in the world, all right?**  
 13 **We're there to build a building.**  
 14 Q. Now, and by the way, when I say no risk, it was  
 15 your position that you were to be at no risk; is that  
 16 correct?  
 17 **A. As an electrical trade manager, we would be at**  
 18 **no risk.**  
 19 Q. Okay. Now, is it fair to say that means that  
 20 Forest Electric would not be bound to the  
 21 subcontractors?  
 22 **A. Yes, sir.**  
 23 Q. And who would be bound to subcontractors if  
 24 Forest Electric was not at risk?

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1 Q. Was there anything that you felt about Banc One  
 2 that did not require such a term or condition to be  
 3 memorialized in writing?  
 4 **A. Long-standing relationships.**  
 5 Q. And those long-standing relationships are with  
 6 Mr. Weinberg, correct?  
 7 **A. Yes, sir.**  
 8 Q. But not with Banc One Building Corporation  
 9 itself?  
 10 **A. No.**  
 11 Q. And you also I think indicated that it was your  
 12 belief or understanding that Forest Electric was to  
 13 act as a construction manager, almost a partner with  
 14 Tishman on this project.  
 15 **A. Yes.**  
 16 Q. I'm going to show you what is going to be  
 17 marked as Altheim 1. Give this to counsel. Altheim 1  
 18 is single project construction services agreement  
 19 contract No. 2, which if you go to page 03934, has  
 20 your signature on it. And it says --  
 21 **A. Hold on, I got to find my glasses.**  
 22 Q. I'm sorry.  
 23 **A. 66 years old, you don't exactly have good eyes.**  
 24 Page 3, page 3, sir?

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1 **A. Banc One.**  
 2 Q. And when you say that it was not the most  
 3 important thing, why not? You I guess just said now  
 4 in your conversations with Mr. Weinberg, Mr. Auwarter  
 5 and Mr. Fahrenbach.  
 6 **A. Because we didn't spend days and days like**  
 7 **we're sitting here talking about it. It was just**  
 8 **something that we knew would be part of contractual**  
 9 **agreements and part of what we're supposed to be**  
 10 **doing.**  
 11 Q. At any time did you memorialize your  
 12 understanding with Mr. Weinberg, Mr. Auwarter,  
 13 Mr. Fahrenbach regarding Forest Electric being at no  
 14 risk?  
 15 **A. No.**  
 16 Q. Is this the type of thing you would have  
 17 memorialized in the normal course of business?  
 18 **A. Depending on the client.**  
 19 Q. Is there any particular reason why you didn't  
 20 do it in this particular instance?  
 21 **A. Because of the client.**  
 22 Q. When you say "the client," are you referring to  
 23 Mr. Weinberg?  
 24 **A. Banc One.**

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1 Q. And the format used here is you'll see there's  
 2 Bates numbers at the bottom.  
 3 **A. I see.**  
 4 Q. So what I'll do is refer to the last numbers of  
 5 the Bates, 3934 is I believe where your signature is  
 6 indicated on this particular contract. And if you go  
 7 back to the first page, which is 3932, and you look at  
 8 the first full paragraph after the various signature  
 9 areas are indicated in the front, it says, "This  
 10 single project construction services agreement is made  
 11 as of the 12th day of September 2003 between  
 12 construction manager and electrical trade manager."  
 13 Do you see that?  
 14 **A. Single project -- yes.**  
 15 Q. Okay. And this identifies the construction  
 16 manager, just above that, the construction manager is  
 17 identified as Tishman Construction Corporation of  
 18 Maryland. Is that fair?  
 19 **A. Um-hum, yes.**  
 20 Q. And electrical trade manager is identified as  
 21 Forest Electric Corporation?  
 22 **A. Yes.**  
 23 Q. Is there anywhere in this contract that you're  
 24 aware of that Forest Electric Corporation is

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12 (Pages 42 to 45)

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1 Identified as a construction manager?	1 signed on page 3934, is it fair to say that you signed
2 MR. BRADLEY: By that term, "construction	2 a document that contradicted whatever understanding
3 manager"?	3 you say you had with Mr. Weinberg regarding no risk?
4 MR. McDONALD: Yes.	4 MR. BRADLEY: Object to form.
5 A. No.	5 A. I signed this contract given to me by other
6 Q. And if we go to, again, going to the page we	6 persons.
7 were at before, 3934, on the signature block where you	7 Q. But is it fair to say, based upon what we've
8 have signed for Forest Electric Corporation, next to	8 just discussed, that those provisions that we have
9 that -- and it's under electrical trade manager; is	9 just discussed contradict the representation that you
10 that correct?	10 made regarding your conversations with Mr. Weinberg?
11 A. Yes, sir.	11 A. If per the letter of the law, then I don't have
12 Q. Next to that it has, it says agent Tishman	12 a -- I don't have enough knowledge to know if that
13 Construction Corporation of Maryland as Banc One	13 contradicts.
14 Building Corporation's agent and construction manager,	14 Q. Well, let me ask you this. I think you just
15 signed by William Stanton. Do you see that?	15 testified that your understanding of no risk for
16 A. Yes.	16 Forest Electric would mean that Forest Electric would
17 Q. Is there anywhere in this contract that you are	17 not be bound to the subs.
18 aware of that Forest Electric is identified, as	18 A. Correct.
19 Tishman is in this contract, as an agent of Banc One	19 Q. And in Section 4.04 on page 3959, does it not
20 Building Corporation?	20 say that subcontractors are to be bound to electrical
21 A. I'm not aware.	21 trade manager, which is Forest Electric in this
22 Q. And if we go to page 3959, it's a little ways	22 particular contract?
23 into the contract, want to direct your attention to	23 A. It does say that, yes.
24 Section 4.04. Let me know when you're there.	24 Q. And also I think you testified that a no-risk
Page 47	Page 49
1 A. I'm here.	1 contract for Forest Electric, that Banc One Building
2 Q. The first line of that section says, "By	2 Corporation would be bound to the subs instead, yes?
3 appropriate agreement, electrical trade manager shall	3 A. Yes.
4 require each subcontractor, to the extent of the work	4 Q. It also says in 4.04 that nothing contained in
5 to be performed by such subcontractor," then it says,	5 the contract documents shall create any contractual
6 "(i) to be bound to electrical trade manager by the	6 obligation between any subcontractor and owner. Is
7 terms of the contract documents." Do you see that?	7 that fair to say?
8 A. Yes.	8 A. Yes.
9 Q. And in this particular contract, Forest	9 Q. Now, want to move on to what will be marked as
10 Electric is identified as the electrical trade	10 Altheim 2. And this is a document dated October 2nd,
11 manager; is that correct?	11 2003 to Creedon Controls from Paul Angerame of Forest
12 A. Yes.	12 Electric Corporation. First paragraph says, "This
13 Q. And if you go further down in that same	13 letter is to acknowledge our mutual desire to enter
14 paragraph, it says, starting at, "Nothing contained in	14 into a subcontract agreement with Creedon Controls
15 the contract documents shall create any contractual	15 electrical contractors." Do you see that?
16 obligation between any subcontractor and owner." Do	16 A. Yes.
17 you see that?	17 Q. And if we go to the attachment to this
18 A. Yes, I do.	18 document, which is referred to on page 1 as Exhibit 1,
19 Q. And if you go back to page 1, which is 3932,	19 and it's on page CL 0624 styled the "Subcontract
20 the owner is identified as Banc One Building	20 Agreement," let me know when you're there.
21 Corporation. Correct?	21 A. I am.
22 A. Yes.	22 Q. And you see that, does that appear to be a form
23 Q. Now, given what we have just talked about in	23 subcontract agreement utilized by Forest Electric
24 regards to this single project contract that you	24 Corporation, to your knowledge?

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1 lines and changes have been made?  
 2 **A. I haven't seen it. You tell me where to go.**  
 3 MR. BRADLEY: You haven't established that  
 4 he's ever even read these e-mails or, they certainly  
 5 weren't copied to him based on what's here.  
 6 Q. Any particular reason why you would not have  
 7 seen any of these documents on this project?  
 8 **A. Yes.**  
 9 Q. And why is that?  
 10 **A. It never has been -- it has been other people's**  
 11 **responsibilities in the organization to deal with**  
 12 **these documents.**  
 13 Q. And who would that be in particular, whose  
 14 responsibility?  
 15 **A. Donna Lucas.**  
 16 Q. And in terms of Donna Lucas and her e-mail  
 17 talking about modifying the Banc One form agreement to  
 18 accomplish no exposure for Forest Electric  
 19 communications, do you know from whom she received  
 20 that direction?  
 21 **A. No.**  
 22 Q. Did you speak with Mr. Angerame about the issue  
 23 of no exposure or no risk for Forest Electric  
 24 Corporation?

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1 such an agreement, and return to the undersigned. As  
 2 soon as authorization is received, we are prepared to  
 3 enter into an agreement as your agent. Do you see  
 4 this in both of those documents?  
 5 **A. Yes, sir, yes, sir.**  
 6 Q. Did Forest Electric at any time ever send  
 7 similar correspondence to Banc One indicating,  
 8 requesting authority to enter into an agreement on  
 9 behalf of Banc One as Banc One's agent?  
 10 MR. BRADLEY: Object to form.  
 11 **A. I can't, I don't know, sir.**  
 12 Q. Do you know if at any time Forest Electric ever  
 13 formally requested authorization from Banc One to  
 14 enter into contracts as Banc One's agent?  
 15 **A. No, sir.**  
 16 Q. When you say, was that a no that you did not do  
 17 it, or that you don't know if it was done?  
 18 **A. I don't know.**  
 19 Q. You don't know. And similarly, is it true that  
 20 you don't know if you ever received authorization from  
 21 Banc One to do that?  
 22 MR. BRADLEY: Object to form.  
 23 **A. No.**  
 24 Q. Meaning again you don't know or --

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1 **A. Yes.**  
 2 Q. Let me -- actually, I might be able to finish  
 3 up very quickly here. Let me skip to what's been  
 4 marked as, I think premarked as Altheim 6 and 7.  
 5 MR. BESTE: Which is which?  
 6 MR. McDONALD: 6 is going to be the first  
 7 one in date of order, it's going to be October 23,  
 8 2003. 7 is the March 1, 2004. They are both on  
 9 Tishman letterhead. They are addressed to Karl  
 10 Auwarter at Banc One. They're both -- well, the first  
 11 one I should say, I'll talk about them individually.  
 12 BY MR. McDONALD:  
 13 Q. No. 6, Altheim 6 is referencing Banc One's CDC  
 14 II general lighting and power RFP 6B, and No. 7 is  
 15 referencing the IT cable conveyance system pod A RFP  
 16 21B:  
 17 Mr. Altheim, I want to direct your  
 18 attention to the third paragraph down on, actually on  
 19 both these letters, I think they're substantially the  
 20 same, if not exactly the same.  
 21 **A. The third paragraph?**  
 22 Q. The third paragraph, that's correct. It says,  
 23 "Please indicate your authorization on behalf of Banc  
 24 One for Tishman Construction Corporation to enter into

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1 **A. I don't know.**  
 2 MR. McDONALD: Can we go off the record  
 3 for a minute? Give me a second, I might be done.  
 4 I have no further questions. Thank you,  
 5 sir.  
 6 THE WITNESS: Thank you, sir.  
 7 MR. BESTE: No questions. Thank you.  
 8 MR. BRADLEY: We'll read and sign.  
 9 (The deposition concluded at 11:38 a.m.)  
 10 I N D E X  
 11 Deponent: PHILIP ALTHEIM Page  
 12 By Mr. Beste..... 2  
 13 By Mr. McDonald..... 41  
 14 EXHIBITS  
 15 Altheim: Page  
 16 1 Single Project Construction Services 41  
 17 Agreement; Banc One 03932-03996  
 18 2 10/2/03 Letter and Subcontract Agreement 41  
 19 CL 0623-0636  
 20 3 E-mail string, Single Project Construction 41  
 21 Services Agreement Contract; FE 014336-4441  
 22 4 2/18/04 E-mail, Contract No. 1 41  
 23 FE 014443-014496  
 24 5 5/4/04 Letter and Construction Services 41  
 25 Agreement; 006113-006173  
 26 6 10/23/03 RFP 6B; Banc One 00716-00717 41  
 27 7 3/1/04 Letter, Final Bid Summary, Project 41

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